



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 636**

**IN THE MATTER
OF
PETER CURTIN**

DISPOSITION AGREEMENT

The State Ethics Commission and Peter Curtin enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On June 23, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Curtin. The Commission concluded that inquiry, and on March 1, 2001, found reasonable cause to believe that Curtin violated G.L. c. 268A.

The Commission and Curtin now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all times relevant, Curtin served on the Tyringham Board of Selectmen ("BOS"). As such, he was a municipal employee within the meaning of §1 of the conflict of interest law, G.L. c. 268A.
2. The selectmen also serve as the Board of Health ("BOH").
3. Curtin was employed as a caretaker for a property in Tyringham.
4. In summer 1997, a pond located on the property was dredged.
5. At its September 25, 1997 meeting, the BOH decided that the silt from the pond dredging would be dumped at the Tyringham Transfer Station ("TTS"). Curtin asserts he did not participate in this decision.
6. On September 27, 1997, Curtin arranged to have the silt dumped at the TTS.
7. Shortly thereafter a heavy rain caused the silt to "run-off" and damage the nearby wetlands.
8. A local restaurant owner, Donald Hale, complained to the Division of Environmental Protection about the damage.

9. Shortly after Hale reported this matter to the DEP, Curtin, as a Board member, requested local and state health and building inspections of Hale's restaurant. All the inspections were within the authority of the Board to order.

10. In December 1997, the DEP fined Curtin for illegal dumping in a wetlands area and ordered him to submit a restoration plan and restore the site by June 1, 1998.

11. At the December 22, 1997 Board meeting, the Board decided the town was responsible for the wetlands violation and that the town, as opposed to Curtin, would restore the wetlands as the Board members had agreed where to put the silt. Curtin significantly involved himself as a Board member in this decision by advocating in the discussion that the town should assume responsibility for any damage caused by the dumping.

12. White Engineering and Wilkinson Excavating restored the wetlands at a cost of \$1,860 and sent bills in that amount to the town.

13. On April 13, 1998, Curtin signed a warrant, which included a \$1,140 payment to White Engineering for the restoration plan. On June 22, 1998, Curtin signed a warrant that included a \$720 payment to Wilkinson Excavating for the restoration.

14. On September 17, 1998, Commission Enforcement staff questioned Curtin about this matter. On October 1, 1998, Curtin reimbursed the town for the \$1,860 in clean-up expenses paid to White Engineering and Wilkinson Excavating.

Conclusions of Law Curtin and the Clean-Up

15. Section 19 of G.L. c. 268A, except as otherwise permitted in that section, prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he has a financial interest. None of the exceptions in §19 apply.

16. The decision made at the December 22, 1997 BOH meeting to make the town responsible for the wetlands violation was a particular matter. In addition, the decision to have the town pay White Engineering and Wilkinson Excavating a total of \$1,860 for the restoration work was a particular matter.^{1/}

17. As set forth above, Curtin participated^{2/} as a BOH member by 1) significantly involving himself as a BOH member in the December 22, 1997 BOH meeting to have the town, rather than Curtin restore the wetlands; and 2) approving warrants totaling \$1,860 for the restoration work.

18. Curtin had a financial interest in the town paying for the restoration as the DEP had indicated that Curtin was responsible for the clean-up. Curtin was aware of his financial interest at the time he participated.

19. Accordingly, by 1) participating in the December 22, 1997 BOH meeting to have the town restore the wetlands; and 2) approving warrants totaling \$1,860 for the restoration work, Curtin participated as a municipal employee in particular matters in which he knew he had a financial interest. In so doing, Curtin violated G.L. c. 268A, §19 on each occasion.

Retaliation against Hale

20. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

21. By requesting local and state health and building inspections of Hale's restaurant shortly after Hale complained about the silt run-off to the DEP, Curtin acted in a manner which would cause a reasonable person knowing all of these facts to conclude that Curtin was likely to act as a result of Hale's position as the DEP complainant. Therefore, Curtin violated §23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Curtin:

(1) that Curtin pay to the Commission the sum of \$1,500 as a civil penalty for violating G.L. c. 268A, §19;^{3/}

(2) that Curtin pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(3) that Curtin waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: August 21, 2001

^{1/}"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{2/}"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{3/}In imposing this fine, we note that Curtin has reimbursed the town \$1,860 for the restoration costs.